

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS



UNITED STATES OF AMERICA,

Plaintiff,

V.

WILLIAM R. BENSON

BRIAN BAILEY, and

THOMAS M. BETHUNE, JR.,

Defendants.

COPY

Criminal Action No. 00-CR-10431-RCL
March 17, 2003,
Boston, Massachusetts

TRANSCRIPT OF TESTIMONY OF BRIAN MURPHY
BEFORE THE HONORABLE REGINALD C. LINDSAY

UNITED STATES DISTRICT COURT

11TH DAY OF TRIAL

DEBRA M. JOYCE, RPR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
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Boston, MA 02210
617-737-4410

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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Reginald C. Lindsay, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, 1 Courthouse, Way, Boston, Massachusetts, on March 17, 2003.

The defendants, William Benson, Brian Bailey, and Thomas Bethune, are present with counsel. The Assistant United States Attorneys and the Department of Justice attorney are present.)

BRIAN MURPHY, having been duly sworn by the Clerk, was examined and testified as follows:

D I R E C T E X A M I N A T I O N

BY MR. MERRITT:

Q. Sir, would you please speak into the microphone and state your full name.

A. Brian Murphy.

Q. How old are you, Mr. Murphy?

A. Thirty-nine.

Q. And where did you grow up?

A. Dorchester.

Q. What town do you live in now?

A. Braintree.

Q. And are you married?

A. Yes.

1 Q. Do you have a family?

2 A. Wife and two kids.

3 Q. And are you currently employed?

4 A. Yes.

5 Q. Where?

6 A. At the Sheriff's Department.

7 Q. Suffolk County?

8 A. Yes.

9 Q. When were you first hired by the Sheriff's Department?

10 A. June of '92.

11 Q. And in what position were you hired?

12 A. Jail officer.

13 Q. And what's your current position?

14 A. Jail officer.

15 Q. How do you describe your duties as a jail officer?

16 A. Care, custody, control.

17 Q. Of whom?

18 A. Of inmates.

19 Q. Have you had different assignments over your career at the
20 jail?

21 A. Yes.

22 Q. What are some of those assignments?

23 A. Units, booking room, control booths.

24 Q. Where are you working now?

25 A. Booking room.

1 Q. And what do you do in the booking room?

2 A. Just process, put in the bails, type their information, put
3 the bails, court dates.

4 Q. Have you ever been on a SERT team?

5 A. Never.

6 Q. Are you familiar with the policies and procedures of the
7 Sheriff's Department with respect to the use of force?

8 A. Yes.

9 Q. And did you know or understand that you were required to
10 write certain reports when force was used?

11 A. Yes.

12 Q. Do you know what a disciplinary report is?

13 A. Yes.

14 Q. What is that?

15 A. If an inmate breaks a rule, infractions of the rules, you
16 write a disciplinary report.

17 Q. And how about an incident report, do you know what that is?

18 A. Yes. If there's a certain incident you write what
19 happened.

20 Q. Are you familiar with the Sheriff's Investigative Division,
21 SID?

22 A. Correct.

23 Q. What is your understanding of what SID's role is in regards
24 to incidents where force was used?

25 A. They investigate it.

1 Q. And in the course of that investigation do you have an
2 understanding about what reports are reviewed?

3 MR. SLAVITT: Objection.

4 THE COURT: Overruled.

5 BY MR. MERRITT:

6 Q. Did you have an understanding what reports SID reviewed
7 when they investigated use of force incidents?

8 A. Incident reports, use of force reports.

9 Q. And did you have an understanding what the possible results
10 of an SID investigation could be when there was a use of force?

11 MR. LOUISON: Objection.

12 MR. PFAFF: Objection.

13 THE COURT: Overruled.

14 A. Yes.

15 Q. What was your understanding?

16 A. They could prosecute you at the state level or the federal
17 level.

18 Q. Prosecute whom?

19 A. An officer.

20 Q. Now, let me direct your attention to late September of
21 1999. Do you recall what shift you were working around that
22 time?

23 A. 3:00 to 11:00.

24 Q. Did you work on the 3:00 to 11:00 for a period of time in
25 1999?

1 A. Yes.

2 Q. How long?

3 A. I've been on the shift for about ten years now.

4 Q. And in September of 1999 did you have a particular
5 assignment in the jail?

6 A. That day or --

7 Q. Well, in late September.

8 A. No. Probably floating.

9 Q. You were floating?

10 A. Floating.

11 Q. Let me ask you specifically about September 24, 1999. Now,
12 you've reviewed some records before you testified?

13 A. Yes.

14 Q. Do you know where you were assigned that day?

15 A. The medical control booth.

16 MR. MERRITT: May I approach the witness, your
17 Honor?

18 THE COURT: Yes.

19 BY MR. MERRITT:

20 Q. Let me show you what's been marked as Government Exhibit

21 80. Do you recognize what that is?

22 A. Yes.

23 Q. What is that?

24 A. That's a page from the logbook.

25 Q. And for Friday, September 24, 1999?

1 A. Yes.

2 MR. MERRITT: Your Honor, I'd move in Government
3 Exhibit 80.

4 THE COURT: Any objection?

5 MR. LOUISON: No, your Honor.

6 MR. SLAVITT: No, your Honor.

7 THE COURT: Exhibit 80 is admitted.

8 (Exhibit 80 received into evidence.)

9 BY MR. MERRITT:

10 Q. And just drawing your attention to Exhibit 80 and what's on
11 the screen, is that a copy of what's in front of you?

12 A. Correct.

13 Q. Now, you work the 3:00 to 11:00 shift?

14 A. Correct.

15 Q. And this is a logbook for which unit?

16 A. The medical -- the medical.

17 Q. The medical?

18 A. Yeah.

19 Q. And what was your assignment?

20 A. The medical control booth.

21 Q. Now, you see this indication here. Is that what you're
22 referring to?

23 A. Yes.

24 Q. Now, someone else's name is crossed out.

25 A. Correct.

1 Q. And your name is written in.

2 A. Correct.

3 Q. Whose writing is all this?

4 A. I believe that's mine.

5 Q. And did you -- was, in fact, your assignment then the
6 medical control booth on that day?

7 A. Yes.

8 Q. And who was assigned to the psych side control booth?

9 A. Officer Ross.

10 Q. And who was assigned to the unit?

11 A. Officer Bailey.

12 Q. And the rest of the entries down here, Mr. Murphy, did you
13 make those entries?

14 A. Yeah, that's my handwriting.

15 Q. Now, you mentioned that there was a Michael Ross working on
16 the psych side. Did you know him?

17 A. Just to say hi to him. Not even -- about that, just about
18 it.

19 Q. So had you worked in the medical unit much before September
20 24, 1999?

21 A. Just back in '95 I worked there for like four months,
22 because I ruptured my Achilles tendon.

23 Q. So this was not a regular assignment for you?

24 A. No.

25 Q. How about Brian Bailey. Did you know him?

1 A. Just to say hi to.

2 Q. Do you see him in the courtroom today?

3 A. Yes.

4 Q. Can you just point him out by article of clothing?

5 A. He's right there.

6 (Brian Bailey stood up.)

7 BY MR. MERRITT:

8 Q. Now, when were you in the medical booth on September 24,
9 1999 could you hear anything that was going on on the psych
10 side?

11 A. No.

12 Q. Could you see anything going on on the psych side?

13 A. No.

14 Q. As part of your job at some point did you go relieve
15 Officer Ross in the psych control booth?

16 A. Correct.

17 Q. And why were you relieving him?

18 A. For lunch.

19 Q. And about what time was that?

20 A. Approximately around 6:30.

21 Q. I'm going to ask you to keep your voice up if you could.

22 A. Okay. 6:30.

23 THE COURT: Move the microphone a little closer to
24 you.

25 THE WITNESS: Sorry.

1 Q. Do you know what a Q-5 is?

2 A. Suicide precaution.

3 Q. And in your experience is that where -- is the psych side
4 where Q-5s are held?

5 A. Correct.

6 Q. When you walked to the psych wing around 6:30 did you
7 become aware of any particular inmate in the psych wing?

8 A. Yes.

9 Q. And in what cell was he?

10 A. 5564.

11 Q. And where is 5564 located?

12 A. Directly in front of the control booth.

13 Q. And did you later learn this inmate's name?

14 A. Nikolas Dais.

15 Q. And when you walked by cell 5564 did you hear anything
16 coming from that cell?

17 A. Yeah. He was banging the door and saying about you punched
18 me in the head or something.

19 Q. Where did you go after walking by 5564?

20 A. Into the control booth.

21 Q. And who was present?

22 A. Officer Ross.

23 Q. And anyone else present there?

24 A. Officer Bailey, but I think he was out in the common area.

25 Q. Were they -- how close were they standing to each other?

1 A. Not too far apart, I believe.

2 Q. Approximately?

3 A. A couple of feet maybe. I don't know.

4 Q. Did one of them say something to you?

5 A. Yes.

6 Q. Can you recall which one it was who said the statement?

7 A. I'm not sure. I'm not sure who said it.

8 Q. What was said then to you?

9 ✓A. That they were going in the room.

10 Q. When it was referred to the room did you know what they
11 were referring to?

12 ✓A. Inmate 5564.

13 Q. Now, is there a procedure for an officer to follow if
14 you're going into the cell of an inmate for a legitimate
15 reason?

16 ✓A. You call a floor supervisor.

17 Q. Did they ask you to call a floor supervisor?

18 A. No.

19 Q. At the point that they said that was Mr. Dais doing
20 anything that you recall?

21 A. No.

22 Q. Did you see any medical emergency at that time?

23 A. No.

24 Q. Did you say anything back to them when it was said that
25 they were going into the cell?

1 A. Yes.

2 Q. What did you say?

3 A. I said I wanted no part of it, you better write good
4 reports, and if anything happens I'm going to call the SERT
5 team.

6 Q. What did you mean when you said I don't want no part of it?

7 MR. SLAVITT: Objection.

8 THE COURT: Sustained.

9 BY MR. MERRITT:

10 Q. What did you mean when you said you better write good
11 reports?

12 MR. SLAVITT: Objection.

13 THE COURT: Sustained.

14 MR. MERRITT: Well, may we be heard on this, your
15 Honor?

16 THE COURT: Yes.

17 (At side bar on the record.)

18 THE COURT: Yes?

19 MR. MERRITT: Your Honor, Mr. Murphy is an
20 unindicted co-conspirator, and he's going to testify later that
21 he, in fact, wrote reports after Bailey told him what to write,
22 how to write it, and they wrote false reports to cover up the
23 incident. So the fact that his mind -- state of mind is
24 relevant because he participates with them in covering up the
25 incident.

1 THE COURT: What do you say about that?

2 MR. SLAVITT: Your Honor, even if his statements --
3 well, statements coming in as verbal acts in any event, but
4 whether he's a co-conspirator or not, unless he said something
5 to Bailey, his state of mind or what he meant by the words is
6 not relevant. Only the fact that he said them is what
7 Mr. Bailey understood or did, not what Mr. Murphy understood or
8 did.

9 I'd also suggest, by the way, that now the
10 government is going to have to undertake the role to the
11 Court's satisfaction that Mr. Murphy is yet another unindicted
12 co-conspirator. In any event, his state of mind is not at
13 issue, is not relevant to what Mr. Bailey understood or didn't
14 understand. That is not relevant.

15 THE COURT: What do you say about that?

16 MR. MERRITT: Your Honor, the state of mind of
17 other co-conspirators covering up this incident is directly
18 relevant. Of course he can be cross-examined about
19 Mr. Bailey -- you don't know what Mr. Bailey thought or
20 whatever -- but the evidence for the jury to infer that is
21 exactly what Mr. Bailey knew, exactly what he meant by that,
22 because, in fact, he did write reports, good reports,
23 suggesting co-conspirator knows how to cover up that they went
24 in there.

25 THE COURT: Objection is sustained.

1 (End of discussion at side bar.)

2 BY MR. MERRITT:

3 Q. Mr. Murphy, after you told them that they better write good
4 reports what's the next thing that happened?

5 A. They went over -- they went by the 5564.

6 Q. And were you in the control booth at this point?

7 A. Correct, yes.

8 Q. What happened next?

9 A. They asked me to open the door.

10 Q. And did you open the door?

11 ✓A. Correct.

12 Q. How do you open the door from the control booth?

13 A. I press a button.

14 Q. When you opened the cell door did you see Inmate Dais?

15 A. Yes.

16 Q. In what position was he in?

17 A. He was standing up.

18 Q. He wasn't on the floor?

19 A. I didn't see that.

20 Q. And after you opened the door what did you see happen next?

21 A. They were talking for a couple of minutes and then they
22 ✓grabbed him, they fell to the bed.

23 Q. When you say they, could you be more specific? Who went
24 into the cell?

25 A. Officer Ross and Bailey.

1 Q. And you said that there was some talk back and forth?

2 A. A few minutes, few seconds, few minutes.

3 Q. And then what's the next thing you remember seeing?

4 A. They grabbed him and they fell to the bed.

5 Q. Who initiated the physical contact?

6 A. I believe it was Officer Ross and Bailey.

7 Q. Did you see Inmate Dais do anything before that contact was
8 initiated?

9 A. No.

10 Q. Did you continue to watch?

11 A. No.

12 Q. What did you do?

13 A. I grabbed the radio, called the SERT team, started to
14 control the doors.

15 Q. Now, you say you called the SERT team. How did you call
16 them?

17 A. Over the radio.

18 Q. Did SERT team members respond?

19 A. Yes.

20 Q. How about -- about how long did that take?

21 A. Two to three minutes.

22 Q. And were you watching what was going on in the cell during
23 that time?

24 A. No.

25 Q. Let me show you what's been entered into evidence as

1 Exhibit 53 A. Do you recognize what's in photograph Exhibit 53
2 A?

3 A. Yes.

4 Q. Can you tell us what this picture depicts?

5 A. It's the control booth.

6 Q. And is that the control booth you were in at this time?

7 A. Correct.

8 Q. And what is this cell here?

9 A. 5564.

10 Q. And is that the cell that Ross and Bailey went in?

11 A. Correct.

12 Q. Now, you said that the SERT team arrived. Do you recall
13 who from the SERT team?

14 A. No.

15 Q. What did you see happening when the SERT team showed up?

16 A. Just believe they went in, restrained Inmate Dais.

17 Q. Well, did you see what was going on in the cell?

18 A. No, not really. I wasn't paying attention.

19 Q. How long did you stay in the booth?

20 A. I know I went back to my assignment before 7:00. I don't
21 know if I went back before. I know I went back at 7:00.

22 Q. And at any time did you see a restraint chair coming down
23 there?

24 A. I believe so, yes.

25 Q. And where was the restraint chair put?

1 A. In cell -- I believe cell 5564.

2 Q. Did you have anything to do with the -- putting the inmate
3 in the restraint chair?

4 A. No, sir.

5 Q. Now, this occurred on a Friday night, September 24th?

6 A. Yes.

7 Q. Sometime after this incident did you speak with Officer
8 Brian Bailey about it?

9 A. I believe it was later that night.

10 Q. And what did he say to you and what did you say to him as
11 best you can recall?

12 A. I believe he told me, you know, it was -- what was in his
13 report, a medical emergency, you know, he came after him. That
14 was it.

15 Q. Now, you say he told you that. How did he tell you that?

16 A. What do you mean how did he tell?

17 Q. Well, if you can best sort of summarize the conversation
18 with Mr. Bailey as best you can.

19 A. Well, he might have told me what was in his report.

20 Q. And what did he tell you he was putting in his report?

21 A. I believe it was just a medical emergency and he came at
22 him, you know, that he stood up, came at -- came at him.

23 Q. Now, did you know that that was true or untrue?

24 A. It was untrue.

25 Q. Were you interviewed by the Sheriff's Investigative

1 Division after that?

2 A. Yes.

3 Q. Do you recall by whom?

4 A. Mark Kulik.

5 Q. And were you asked questions about this incident?

6 A. Yes.

7 Q. And what did you tell him about the reason Bailey and Ross
8 went into Inmate Dais' cell?

9 MR. LOUISON: Objection, your Honor.

10 THE COURT: Sustained.

11 MR. MERRITT: Your Honor --

12 THE COURT: Come over here, please.

13 (At side bar on the record.)

14 THE COURT: Yes?

15 MR. MERRITT: Well, your Honor, this is not being
16 offered for the truth. It's being offered to show that he went
17 along with what Bailey told him.

18 THE COURT: He did?

19 MR. MERRITT: Yes.

20 THE COURT: All right. Okay.

21 MR. SLAVITT: Again, your Honor, I'd like a
22 limiting instruction at a minimum if the government is --

23 THE COURT: Okay.

24 MR. LOUISON: I think prejudice outweighs any
25 probative value the government is offering. It goes directly

1 to -- and I don't think the limiting instruction is going to
2 cure the potential confusion.

3 THE COURT: When I think about it, I don't know
4 that a limiting instruction is appropriate in any event.

5 MR. LOUISON: You do not?

6 THE COURT: No, because I assume it's being offered
7 as part of the evidence of a cover-up.

8 MR. MERRITT: That's correct, your Honor.

9 THE COURT: Okay. You may have it.

10 (End of discussion at side bar.)

11 BY MR. MERRITT:

12 Q. All right. Mr. Murphy, I think the question was when you
13 were interviewed by Deputy Kulik what did you tell him the
14 reason was that Bailey and Ross went into the cell?

15 A. That it was medical emergency.

16 Q. What else did you tell him?

17 A. That Inmate Dais came at him in a threatening matter.

18 Q. Now, is it true that they went in because of a medical
19 emergency?

20 A. No.

21 Q. Was it true that Inmate Dais came in and attacked them?

22 A. No.

23 Q. Did you write a report after that?

24 A. Correct.

25 MR. MERRITT: May I approach the witness, your

1 Honor?

2 THE COURT: Yes.

3 BY MR. MERRITT:

4 Q. I place before you Government Exhibit 58. Do you recognize
5 that?

6 A. Yes.

7 Q. What is that, Mr. Murphy?

8 A. That's my report.

9 Q. Is that the report you submitted to SID?

10 A. Correct.

11 MR. MERRITT: Your Honor, I move in Exhibit 58.

12 THE COURT: Any objection?

13 MR. LOUISON: No, your Honor.

14 THE COURT: 56 is admitted.

15 MR. SLAVITT: I'm sorry, what number, your Honor?

16 THE COURT: 56.

17 MR. MERRITT: 58, I believe.

18 THE COURT: I'm sorry, 58. Sorry.

19 (Exhibit 58 received into evidence.)

20 BY MR. MERRITT:

21 Q. All right. Mr. Murphy, I placed on the screen -- is that
22 page one of Exhibit 58?

23 A. Correct.

24 Q. And if I can ask you to just read along to the -- read your
25 writing to the jury.

1 A. The whole report?

2 Q. Yes.

3 A. "On the above day and time while assigned to the
4 medical control while entering the psych
5 control" --

6 THE COURT: Mr. Murphy, I'm going to ask you to
7 start again. Read slowly and keep your voice up, please.

8 THE WITNESS: Okay.

9 A. "On the above day and time while assigned to the
10 medical control while entering the psych control to
11 relieve Officer Ross for dinner I observed Inmate
12 Dais yelling you punched me in the head and also
13 kicking his door. When he" --

14 THE COURT: Please, please, slowly, slowly.

15 A. "While Officer Bailey was doing a round of the unit
16 he noticed Inmate Dais lying on the floor. Before
17 entering the room to check on Inmate Dais Officer
18 Bailey asked Officer Ross to stand by while
19 entering the room to check on Inmate Dais. Inmate
20 Dais stood up and began yelling and approaching
21 Officer Ross and Bailey in a threatening manner.
22 At this time I called the SERT team to the psych
23 unit. Officer Bailey and Ross proceeded to
24 restrain Inmate Dais. SERT arrived and cuffed
25 Inmate Dais. While cuffed Inmate Dais still

1 remained uncooperative. SERT then proceeded to
2 place inmate dais in the chair."

3 Q. Now, Mr. Murphy, the part that you wrote in there about --
4 that Officer Bailey noticed Inmate Dais lying on the floor, was
5 that true?

6 A. No.

7 Q. And the part that you wrote in there:

8 "While entering the room to check on Inmate Dais,
9 Inmate Dais stood up and began yelling and
10 approaching Officer Ross and Bailey in a
11 threatening manner."

12 Was that true?

13 A. No.

14 Q. Now, I'm also going to place before you what's been
15 admitted as Government Exhibit 55, which I think you can see up
16 on the screen.

17 Is this the report for Officer Bailey for that
18 incident.

19 A. Yes, I believe so.

20 Q. And drawing your attention to this section here, where it
21 says:

22 "At 6:30 Officer Murphy relieved Officer Ross for
23 dinner. Before Officer Ross left he waited for me
24 to finish my round. As I approached Inmate Dais'
25 cell the inmate fell to the ground choking."

1 Is that true?

2 A. I didn't see that.

3 Q. Well, I asked you: did it happen?

4 A. No.

5 Q. "And shaking. As I observe this I hit my alarm and
6 asked Officer Ross to assist me. As I approached
7 the inmate he got up and started throwing punches
8 at me."

9 Was that true?

10 A. No.

11 Q. "After the inmate was placed in cuffs the inmate
12 became more violent and verbally threatening
13 towards the officers. The inmate kept throwing
14 himself off the bunk."

15 Did you see that happen?

16 A. I didn't see it.

17 (Discussion off the record.)

18 BY MR. MERRITT:

19 Q. Mr. Murphy, why did you write a false report and lie to SID
20 about what happened in the cell?

21 MR. SLAVITT: Objection.

22 THE COURT: Overruled.

23 A. I can answer that?

24 Q. Yeah.

25 A. I wanted to cover-up. I didn't want to -- you know, I

1 couldn't rat these guys out.

2 Q. In December of 2000 did you become aware the FBI was
3 investigating this incident?

4 A. Yes, when they showed up at my door.

5 Q. And were you interviewed by two FBI agents?

6 A. Yes, two female FBI agents.

7 Q. Did you tell them the truth?

8 A. No.

9 Q. What did you do?

10 A. I stuck to my report.

11 Q. After that did you get a subpoena to appear before a
12 federal grand jury?

13 A. Correct.

14 Q. Was that in January of 2001?

15 A. Correct.

16 Q. And prior to the grand jury appearance did you meet with
17 the agents again, prosecutor?

18 A. Yes.

19 Q. And were you told anything about the grand jury?

20 A. Yes.

21 Q. What were you told?

22 A. That I could plead the fifth or tell the truth. An option
23 wasn't -- lying wasn't an option.

24 Q. And were you given a proffer letter at that time?

25 A. Correct.

1 Q. Did you ask for it?

2 A. No.

3 Q. What did you understand that letter, the terms to be?

4 A. That my testimony couldn't be used against me, but if I was
5 involved in other incidents I could still be prosecuted.

6 Q. Were any other representations made to you by the
7 government about what they would do?

8 A. They said they'd notify my job and tell them about my
9 truthful cooperation.

10 MR. MERRITT: No further questions, your Honor.

11 THE COURT: Mr. Pfaff?

12 MR. PFAFF: Thank you, your Honor.

13 CROSS EXAMINATION

14 BY MR. PFAFF:

15 Q. Good morning, Mr. Murphy.

16 A. Good morning.

17 Q. Mr. Murphy, you testified earlier that your function as a
18 correctional officer is care and custody, control of inmates;
19 is that correct?

20 A. Correct.

21 Q. And you've seen Officer Bethune, have you not, during the
22 course of your career?

23 A. Yes.

24 Q. And you do know that he has a reputation for truthfulness
25 and patience, do you not?

1 MR. MERRITT: Objection, your Honor. Form of the
2 question.

3 THE COURT: Sustained.

4 BY MR. PFAFF:

5 Q. You do know that Mr. Bethune has a reputation for patience
6 with inmates, correct?

7 A. I believe so.

8 MR. PFAFF: Thank you. Nothing further.

9 MR. LOUISON: If I may, your Honor.

10 Good morning, ladies and gentlemen.

11 THE JURY: Good morning.

12 CROSS EXAMINATION

13 BY MR. LOUISON:

14 Q. Good morning, Mr. Murphy. Just a few questions.

15 You were talking about being assigned to the
16 medical unit back in September of 1999, which is the fact
17 pattern that you were just talking about, correct?

18 A. Correct.

19 Q. And you talked about being assigned there because of a
20 rupture to your Achilles tendon. Did I get that correct?

21 A. Yeah, in '95.

22 Q. Now, were you on light duty?

23 A. Yes.

24 Q. Would you describe briefly for the Court and jury what
25 light duty is or was back then?

1 A. I just got different assignments. No inmate contact.

2 Q. And is it fair to say that afforded you the ability, even
3 though were you recovering from some physical ailment, gave you
4 the opportunity to continue working in the jail?

5 A. Correct.

6 Q. And by light duty did you have lighter job requirements
7 than a regular JO assignment?

8 A. Yes.

9 Q. Okay. And that was -- was that -- is it fair to say that
10 the medical unit was -- some of the assignments there were
11 light-duty assignments?

12 A. Correct.

13 Q. Yes?

14 A. Correct.

15 Q. Okay. And were you aware in October of 1999, about a month
16 or so later, Jail Officer Bill Benson was assigned there?

17 A. Yeah -- I don't recall.

18 Q. Okay. You don't have a specific recollection.

19 A. No.

20 Q. Do you have a recollection as you sit here today that
21 during that period of time Benson was on light duty, as you
22 were, in the med unit?

23 A. I believe he was at one point.

24 Q. Okay. That is your understanding?

25 A. I believe so.

1 Q. Are you familiar with Billy Benson?

2 A. Just to say hi to.

3 Q. And are you familiar with his reputation within the jail
4 for peacefulness and non-violence?

5 A. Yes.

6 Q. And what is your understanding of his reputation?

7 A. You know, I couldn't -- you know --

8 Q. Is it a non-violent reputation is it your understanding?

9 A. Yes.

10 Q. Yes?

11 A. I believe so.

12 Q. And peaceful with inmates?

13 A. Yeah.

14 Q. Okay. Now, describing and stepping back for a moment to
15 the med unit, that's the 5-5 unit; is that fair to say?

16 A. Correct.

17 Q. Now, briefly for the jury and Court is it fair to say that
18 on the medical side of that floor is a storage area for medical
19 supplies?

20 A. Yes.

21 Q. Is there a room next to the medical booth where nurses come
22 in and out can get supplies and other materials?

23 A. At that time, yes.

24 Q. Yes. And did you say at that time?

25 A. Yeah. I don't believe it still is.

1 Q. Okay. But, yes, actually, just talking about at that time
2 in October of 1999.

3 A. Yes.

4 Q. It was your understanding that there was a room on the med
5 side near the med booth where the nurses within the facility
6 could come and go to get supplies.

7 A. Correct.

8 Q. And on the 3:00 to 11:00 shift did you have an
9 understanding of how many nurses would generally be on duty or
10 working within the jail?

11 A. No, I didn't.

12 Q. Was it more than one?

13 A. I believe so.

14 Q. Okay. But you don't have a specific number?

15 A. No.

16 Q. Now, at the time in the med unit, unless the inmates or the
17 detainees were locked down in their room, were they generally
18 able to walk within the medical side of the med unit?

19 A. Correct.

20 Q. Okay. And would that include ability to walk near or about
21 where that medical supply room is or was?

22 A. Yes.

23 Q. Okay. And if -- and, therefore, if nurses coming in and
24 out would have to -- nurses coming in and out to get to that
25 med supply room would by necessity pass by other detainees if

1 they're out on the floor?

2 A. Correct.

3 Q. Okay. Now, this incident that you just described that
4 happened on or around September 1999 had nothing whatsoever to
5 do with Billy Benson, correct?

6 A. No.

7 Q. Even though Billy Benson was on the med floor sometime
8 later, nothing you described had anything to do with him.

9 A. No.

10 MR. LOUISON: Okay, thank you.

11 CROSS EXAMINATION

12 MR. SLAVITT: Good morning everybody.

13 THE JURY: Good morning.

14 CROSS EXAMINATION

15 BY MR. SLAVITT:

16 Q. Good morning, sir. My name is Evan Slavitt, and I
17 represent Mr. Bailey in this matter.

18 First, a little administrative question. Do you
19 still have Exhibit 80 in front of you?

20 A. What number?

21 Q. 80. It's the logbook for Friday, September 24, 1999.

22 A. Yes.

23 Q. Could you just clear something up for me? Can you look
24 down at the entry for 5:20 it looks like? Do you see that?

25 A. Correct.

1 Q. And it identifies that Mr. Bailey and somebody named
2 Manning were on first dinner?

3 A. Yes.

4 Q. And then the second dinner was you and Mr. Ross at the same
5 time at 6:00.

6 A. Correct.

7 Q. Were you and Mr. Ross, in fact, on the same dinner cycle?

8 A. No, they must have -- no.

9 Q. No. So, in fact, you were on at 6:00 and then you came up
10 to relieve Mr. Ross at 6:30.

11 A. Correct.

12 Q. Okay. Now, when you came up to relieve Mr. Ross who was in
13 the psych control booth somebody -- either Mr. Ross or
14 Mr. Bailey -- said that they were going into the cell, correct?

15 A. Correct.

16 Q. Okay. And you don't recall who said that.

17 A. No, sir.

18 Q. And you were concerned because that's against regulations.

19 A. Yes.

20 Q. Okay. And Mr. Ross, in fact, was the one who went in
21 first, correct?

22 A. I don't remember.

23 Q. Okay. But, in any event, you said that they went in and
24 you saw them talking for a couple of minutes, right?

25 A. I believe so.

1 Q. So they were standing there talking for a little while,
2 right?

3 A. Yes.

4 Q. Okay. So time passes a little bit, and then what you saw
5 next was you saw that they attempted to restrain Mr. Dais and
6 he went down to the bed.

7 A. They grabbed him, they fell on the bed.

8 Q. Okay. Now, from where you were standing you were looking
9 at Mr. Bailey's back I take it?

10 A. Correct.

11 Q. And past him you were looking toward -- sort of around the
12 corner to Mr. Ross and Mr. Dais?

13 A. No.

14 Q. In other words, Mr. Dais was against the sort of back
15 against the window, correct?

16 A. I don't remember where -- you know, how far he was back.

17 Q. Well, I guess my question is Mr. Ross and Mr. Bailey's back
18 were to you while you were in the psych control booth, correct?

19 A. Correct.

20 Q. And Mr. Bailey, in fact, was between you and Mr. Ross,
21 right? He was standing closer to the door.

22 A. I don't recall.

23 Q. So what you saw was Mr. Bailey standing there for a little
24 while, while Ross was talking to Dais, and then you saw the two
25 of them put Mr. Dais on the bed.

1 A. I believe -- yeah. I just know they fell on the bed. I
2 don't -- you know.

3 Q. By the way, when was the last time you spoke to the United
4 States about your testimony before coming here today?

5 A. Today's date --

6 Q. Today would be Monday.

7 A. Last Friday.

8 Q. Okay. You went over what you were going to say?

9 A. Correct.

10 Q. They practiced with you, asked you some questions --

11 A. Yes.

12 Q. Now -- then you said the restraint chair came in, right?

13 A. Yes.

14 Q. Okay. That's a decision of the supervisor, correct?

15 A. Correct.

16 Q. Blue shirts have nothing to do with that decision, right?

17 A. No.

18 Q. Now, a little later on you said that Mr. Bailey came along
19 and told you what was going to be in his report, correct?

20 A. I believe so.

21 Q. All right. I just want to be very clear. Where were you
22 at the time?

23 A. I believe I was in the medical control booth.

24 Q. Mr. Bailey comes by, correct?

25 A. I believe so.

1 Q. He simply tells you what he is putting in his report,
2 correct?

3 A. Yes.

4 Q. And then he leaves.

5 A. Yes.

6 Q. Okay. That was the extent of the conversation.

7 A. I believe so.

8 Q. And then your report isn't dated until the 28th, correct?

9 A. Correct.

10 Q. So you wrote it over the weekend or when you came in on the
11 next shift?

12 A. The day I got interviewed by Deputy Kulik.

13 Q. Okay. And then you decided what you were going to put in
14 the report.

15 A. Yes.

16 Q. Okay. And you wrote medical emergency.

17 A. Yes.

18 Q. Now, just so I'm clear, how old are you?

19 A. Thirty-nine.

20 Q. And how long -- at this point in 1999 how long had you been
21 working at the Nashua Street Jail?

22 A. Seven years maybe, seven --

23 Q. And you're still working there?

24 A. Correct.

25 Q. Not suspended?

1 A. No.

2 Q. Not fired?

3 A. No.

4 Q. And I believe you were asked some questions on direct about
5 being trained on the use of excessive force?

6 A. Correct.

7 Q. Okay. Is it fair to say that your understanding of your
8 training was that excessive force is when the incident is over
9 and you keep using force, that's excessive?

10 A. Correct.

11 Q. Such as after -- such as after the point at which an
12 inmate, for example, can be handcuffed?

13 A. Excuse me?

14 Q. That would be after the inmate, for example, has been
15 handcuffed, now the incident is over?

16 A. Correct.

17 MR. SLAVITT: I have nothing further, your Honor.

18 MR. MERRITT: Just a few, your Honor.

19 THE COURT: Yes.

20 REDIRECT EXAMINATION

21 BY MR. MERRITT:

22 ✓Q. You were asked on cross-examination whether you were
23 concerned that Bailey and Ross going into the cell was against
24 regulations. Did you have another concern?

25 MR. SLAVITT: Objection, your Honor. That was not

1 the question I asked.

2 THE COURT: Sustained.

3 BY MR. MERRITT:

4 Q. Well, did you have any other concerns besides the
5 regulations?

6 MR. SLAVITT: Objection.

7 THE COURT: Sustained.

8 BY MR. MERRITT:

9 Q. Just so we understand, you wrote your report when in
10 relation to your interview with Deputy Kulik?

11 A. I believe that night after he interviewed me.

12 Q. And you were asked the question, I think, to the effect you
13 decided what to put in your report. Do you recall that
14 question?

15 A. Yes.

16 Q. Why did you decide to put those false stories in your
17 report?

18 A. To cover up.

19 Q. And, as far as you know, Mr. Murphy, is this the first time
20 that your testimony has been made known publicly?

21 MR. LOUISON: Objection.

22 THE COURT: Sustained.

23 BY MR. MERRITT:

24 Q. Well, do you have any reason to believe that the Sheriff's
25 Department knows what your testimony was before today?

1 MR. LOUISON: Objection.

2 THE COURT: Sustained.

3 BY MR. MERRITT:

4 Q. Well, do you expect now that you've given public testimony
5 that there may be disciplinary proceedings?

6 A. Correct.

7 MR. MERRITT: Thank you, your Honor.

8 THE COURT: Any further questions?

9 MR. PFAFF: Yes, your Honor.

10 RECROSS EXAMINATION

11 BY MR. PFAFF:

12 Q. Mr. Murphy, the fact that an inmate is handcuffed doesn't
13 mean that he no longer poses a threat; is that correct?

14 MR. MERRITT: Objection, your Honor, scope.

15 THE COURT: You may have it.

16 BY MR. PFAFF:

17 Q. The question is: The fact that an inmate is handcuffed,
18 that doesn't mean that he doesn't pose a threat, does he?

19 A. Right.

20 Q. So he can still pose a threat?

21 A. Yes.

22 Q. So you can use force on an inmate, put handcuffs on an
23 inmate that still poses a threat to another's safety, another
24 officer's safety?

25 A. Correct.

1 MR. PFAFF: Nothing else.

2 RECROSS EXAMINATION

3 BY MR. LOUISON:

4 Q. Mr. Merritt just asked you about possible disciplinary
5 action taken by the sheriff's office. Your expectation, is it
6 not correct, if discipline is brought you expect the U.S.
7 Attorney's office to write a letter to the Sheriff's Department
8 telling them about your now cooperation.

9 A. They never mentioned a letter to me.

10 Q. Okay. Communicate to the office.

11 A. Communicate.

12 Q. Okay. Just so we're clear, you testified about -- that
13 expectation back when you went before the grand jury that your
14 expectation was that they would communicate, the U.S. attorneys
15 that are involved in this case would communicate your then
16 truthful or cooperation with the sheriff's office in the event
17 you get disciplined.

18 A. Correct.

19 MR. LOUISON: Thank you.

20 MR. SLAVITT: I have nothing, your Honor.

21 THE COURT: Mr. Murphy, thank you very much.

22 You're excused.

23 - - - - -

24 CERTIFICATION

25 I certify that the foregoing is a correct

1 transcript of the record of proceedings in the above-entitled
2 matter to the best of my skill and ability.

3
4
5
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7 _____
Debra M. Joyce

8 Official Court Reporter
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EXAMINATION INDEX

BRIAN MURPHY

DIRECT BY MR. MERRITT	3
CROSS BY MR. PFAFF	26
CROSS BY MR. LOUISON	27
CROSS BY MR. SLAVITT	31
CROSS BY MR. SLAVITT	31
REDIRECT BY MR. MERRITT	36
RECRÖSS BY MR. PFAFF	38
RECRÖSS BY MR. LOUISON	39

EXHIBIT INDEX

MAR / ADM

Government

58	21
80	8